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H.B. 5259 -- Debit Card Gasoline Purchases

General Law Committee public hearing – February 25, 2014

Testimony of Raphael L. Podolsky

Recommended Committee action: **REVISE BILL TO TREAT DEBIT AS CASH**

This bill authorizes the Commissioner of Consumer Protection to require the posting on each gas pump, at any gas station offering a cash discount, a statement whether a debit card payment is subject to the cash price or the credit price. There are two problems with this bill. *First*, the Commissioner has already promulgated a regulation substantially containing this provision. The bill adds little or nothing to that regulation. *Second and more fundamental*, the regulation itself misapplies C.G.S. 42-133ff(c), which requires that debit card purchasers receive the cash price. The General Law Committee should, if anything, clarify 42-133ff(c) so as to eliminate the misconception that debit card customers can be charged a credit card price. If the Committee will not do so, then this bill should at least be revised so as to strengthen the Commissioner's regulation.

(1) Strengthening the regulation: The DCP regulation, which is found in Section 16a-15a-2(d) of the Regulations of Connecticut State Agencies, provides that, if any non-cash form of payment is accepted by the gas station, then "disclosure by the retailer in a form acceptable to the commissioner shall be posted in a prominent manner at the point of dispensing said motor fuel alerting consumers to the form or forms of payment to which the cash discount price does not apply." See www.sots.ct.gov/sots/lib/sots/regulations/title_16a/015a.pdf. If H.B. 5259 is to continue to allow a debit transaction to be subject to a credit card price, then the bill should be revised to include:

- The failure to make such a disclosure results in the cash price being the price.
- The disclosure must be both at each pump dispensing gasoline and on any other signs disclosing the discounted price.
- The disclosure must be truly conspicuous and prominent – I would suggest as prominent as the prices themselves.
- The failure to comply with these requirements is an unfair trade practice.

The Commissioner's regulation took effect almost 2½ years ago (Oct. 5, 2011), and my experience is that it is commonly ignored by gas stations. Even those stations that disclose that "Debit Customers Pay the Credit Price," or similar language, do so on a pump sticker (not on the card above the pump) in type that is tiny compared with the 2.75" numerals that show the price of the gasoline or even the letters that say "CREDIT" or "CASH."

(2) Applying the statute: Subsection (a) of C.G.S. 42-133ff prohibits surcharging gas station customers based on method of payment, but subsection (c) permits discounting the

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price "to induce such buyer to pay by cash, debit card, check or similar means rather than by credit card" *[underlining added]*. The key phrase in the statute is "rather than," which originally contrasted a discount price for cash, check, or similar means with a credit card price. In 2008, the legislature amended the statute to classify debit cards as "similar" to cash and checks (not to credit cards) by adding them to that group. The addition of the phrase "debit card" was not to permit it to be assigned the credit card price but rather to include it in any discount price. That is reasonable policy, because the statute is supposed to be consumer protective, not dealer protective. While it is true that a dealer may be charged by a network for accepting debit cards (although usually at a lower price than for credit cards), from the customer's perspective they are simply transferring their own money and are functionally paying cash. There is no extension of credit by anyone. The acceptance of a debit card is an inducement to the customer to buy gasoline at the station and is a routine cost of doing business. The following language would properly clarify C.G.S. 42-133ff(c):

Subsection (c) of Section 42-133ff is repealed and the following is substituted in lieu thereof:

(c) Nothing in this section shall prohibit any seller from offering a discount to a buyer to induce such buyer to pay by cash, debit card, check or similar means, rather than by credit card, provided that such discount is offered equally to buyers paying by cash, debit card, check or similar means. In furtherance of the legislative findings contained in section 42-133j, as amended by this act, no existing or future contract or agreement shall prohibit a gasoline retailer or distributor from offering a discount to a buyer based upon the method of payment by such buyer for such gasoline. Any provision in such contract or agreement prohibiting such retailer or distributor from offering such discount is void and without effect as contrary to public policy.